U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 0 7 2014 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A).

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, specifically as a jewelry designer and manufacturer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner asserts that the director did not give proper weight to the submitted documentation in determining that the petitioner did not establish his eligibility pursuant to the criteria enumerated at 8 C.F.R. § 204.5(h)(3). The petitioner asserts he met four of the criteria and is an alien at the very top of his field who is properly classifiable as an alien of extraordinary ability.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria[2]

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

[2] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The director considered evidence of the various awards that the petitioner won, as well as the awards that the petitioner's company won. The director considered the following awards the director characterized as: "Superior National Manager; Top Exporter; Best Designer; Best Producer; and 1 of the 100 Industrialists." The director ultimately concluded that the petitioner did not meet the plain language requirements of the regulation. The director properly determined that the awards that the petitioner's company won did not qualify because the plain language of the regulation specifies that the petitioning alien must receive the award or prize.

The initial evidence included a 2008 "Conversation" with the petitioner indicating that he received the title of and the following articles in the or the

1. A article indicating that the petitioner had received 36 plaques of appreciation, was named an Exemplary Designer and Producer 2001 through 2009, was ranked introduced as a successful manager and ranked first at the Guild's Efficiency Exhibition and received crystal trophies;

2. A article indicating that the petitioner had been designated a Superior Designer and Producer;

3. A article indicating that the petitioner had been designated as a Superior Designer of Gold and Jewelry;

4. A article indicating that the petitioner had received the "topmost appreciation plaque of planner" at the

5. A article indicating that the petitioner received a plaque of honor for the Best Design at the and

6. A article indicating that the petitioner was recognized as one of 100 exemplary industrialists.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Primary evidence of awards consists of copies of the award certificates or official competition results from the organizing entity. The published material described above constitutes secondary evidence. As the petitioner has not demonstrated that certificates for the honors documented solely by published material do not exist or are unavailable, the secondary evidence has no probative value as evidence of the petitioner's receipt of those awards. The petitioner submitted the following certificates, which constitute primary evidence:

1. An undated appreciation letter the Governor of signed stating that the petitioner achieved first rank and crystal statute "in ;

2. An undated appreciation letter the Managing Director of the signed announcing that the petitioner achieved first rank in the first exhibition of

3. An undated appreciation letter the Managing Director of signed awarding first rank in design and production;

4. An undated appreciation letter the President of signed affirming the petitioner's "proper and qualified selection as an the [sic] best industrialist in and

5. An undated appreciation letter the Head of signed affirming the petitioner's acquisition of first rank in design and manufacturing the most beautiful jewelry and booth decoration.

On appeal, the petitioner asserts that the various awards granted to the petitioner at jewelry exhibitions held in Iran qualify under the regulation. In support of the claim, the petitioner highlights a letter from a representative of an exhibition and competition organizer. the Managing Director of the states: "The fantastic exhibition we create in is the largest and most prominent international jewelry exhibitions held in Iran . . . . It is a notable honor in Iran to receive this kind of achievement in an international exhibition, and it is recognized by everyone in the jewelry industry as a sign of the greatest achievement and talent of the winner." The content of the letter is insufficient to establish the existence of national or international recognition beyond those who are associated with the

The remaining evidence of record is also insufficient to demonstrate that these types of awards are recognized beyond the event organizer. The director, in his RFE, specifically requested information that would be probative evidence of the national or international recognition of the awards in the field, such as: the criteria used to grant prizes or awards; the significance of the prizes or awards; the reputation of the organizations or panels granting the panels or awards; who is considered for the prizes or awards, including the geographic scope for which the candidates may apply; how many prizes or awards are conferred each year; and previous winners who enjoy national or international acclaim. While the petitioner submitted Mr. letter in response, the letter does not provide the extensive details the director requested. Furthermore, Mr. letter attests to the significance of the exhibitions organized by his own organization, the USCIS need not rely on an entity's own vague claims of prestige. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (finding that USCIS need not rely on the promotional material of a publisher). While the media coverage demonstrates some recognition of the events, that coverage is insufficient absent information pertaining to the specific awards. For example, the petitioner did not document the number of honor

recipients at each event. Notably, at least one event recognized 100 industrialists. Accordingly, the record is insufficient to establish that the awards that he won as a jewelry designer are nationally or internationally recognized.

Accordingly, the petitioner has not established this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

In his denial decision, the director concluded that the various articles about the petitioner in various publications and the petitioner's book the petitioner submitted did not meet the requirements of this criterion. On appeal, the petitioner only addresses the asserting that the evidence submitted about the is sufficient to demonstrate that the publication is major media, as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Specifically, the petitioner references the letter from to substantiate the claim of as major media.

In relevant part, writes:

> Since Iranian publications are not audited by an independent agency, the figures on print circulation are estimates based on street sales reach (number of kiosks and sellers in major cities), the number of paid subscriptions, and estimate of print-runs from one of the four major presses in . . . In the case of the print edition of the newspaper, it has a daily print run of about 28,000 copies, with a readership estimated at 75,000 English-language readers. They claim a paid subscription base of 15,000, they sell in newsstands in Iran and many major cities, and copes are purchased by many embassies around the world.

According to the estimates of copies provided in letter, the highest possible circulation number would be around 28,000 per day. Prior to the issuance of the director's decision, USCIS issued a request for evidence (RFE), specifically for additional information relating to circulation numbers. In the RFE response, the petitioner provided background information about Iranian media with a article. The submitted article states:

> Iran has an array of newspapers available both daily and weekly, as well as both locally and nationally. There are 3500 print media outlets with 181 daily newspapers and 2028 weekly newspapers circulation (. . . Popular daily newspapers have a generally have a [sic] 50,000-200,000 circulation rate. (

As an initial matter, the petitioner has not established that is more reliable than user edited internet sites similar to *Wikipedia*.[3] Even if this website is reliable, the information from the website does not establish that the constitutes major media. The background information from indicates that the daily print run for the falls well below the circulation range of popular daily newspapers. In light of the prolific number of daily newspapers in Iran, the fact that the estimated number of print copies falls well below the circulation range of popular daily newspapers does not support the petitioner's claim that the constitutes major media. While USCIS gives weight to the expert testimony from Mr. the petitioner's own submitted background information regarding the number of newspapers and their circulation ranges does not corroborate Mr. claims. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that USCIS may give less weight to an uncorroborated opinion). Therefore, looking at the entirety of the evidence the petitioner submitted under this criterion, the evidence relating to national and/or international circulation and distribution numbers is insufficient to establish that the constitutes major media on an international scale.

For all of the above reasons, the petitioner has not established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The director determined in his decision that the petitioner met this regulatory criterion and the record supports the director's conclusions in this regard.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The director determined that the petitioner submitted sufficient evidence demonstrating he met this criterion. Upon review of the evidence of record and the director's decision, there is sufficient documentation in the record to meet the plain language requirements under 8 C.F.R. § 204.5(h)(3)(iv).

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

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[3] There are no assurances about the reliability of *Wikipedia*. *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian,* 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[4] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I. & N. Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).